

31804

SERVICE DATE - APRIL 30, 2001

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34016

Livonia, Avon & Lakeville Railroad Corporation–Continuance in Control

Exemption–Western New York & Pennsylvania Railroad, LLC

Livonia, Avon & Lakeville Railroad Corporation (LAL), a Class III rail carrier, has filed a verified notice of exemption to continue in control of Western New York & Pennsylvania Railroad, LLC (WNYP), upon WNYP's becoming a carrier.

This transaction is related to STB Finance Docket No. 34017, Western New York & Pennsylvania Railroad, LLC–Lease and Operation Exemption–Norfolk Southern Railway Company and Pennsylvania Lines LLC, wherein WNYP seeks to sublease and operate a line of railroad approximately 145.2 miles long in Steuben, Allegany, Cattaraugus and Chautauqua Counties, NY, and Erie County, PA.

According to the verified notice of exemption, LAL expects to continue in control of WNYP once WNYP becomes a rail carrier after approval or exemption of that transaction. The earliest the transaction could have been consummated was April 19, 2001, the effective date of the exemption (7 days after the exemption was filed).

At the time it filed the notice, LAL owned and controlled one existing Class III rail carrier: Ontario Central Railroad Corporation, which operates in New York.

LAL states that: (i) LAL will not connect with the rail lines of any existing carrier in the LAL family; (ii) the continuance in control is not part of a series of anticipated transactions that would result in such a connection; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34016, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor, Washington, DC 20036.

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Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary